

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CASEY C. BERTO,

Petitioner,

v.

JASON BENNETT,

Respondent.

Case No. C24-1491-JHC-MLP

ORDER TO SHOW CAUSE

Petitioner Casey Berto is a state prisoner who is currently confined at the Stafford Creek Corrections Center in Aberdeen, Washington, pursuant to a judgment and sentence entered in King County Superior Court case number 17-1-00068-6. (*See* dkt. # 1-1 at 1.) Petitioner has presented to the Court for filing a petition for writ of habeas corpus under 28 U.S.C. § 2241 in which he asserts that his current custody is unlawful because the statute pursuant to which he was sentenced is unconstitutional. (Dkt. ## 1-1, 1-2, 1-3.) Specifically, Petitioner contends that he received an indeterminate life sentence pursuant to RCW 9.94A.507 which authorizes “a board” to increase his mandatory minimum term of confinement, and that this constitutes a violation of his Sixth Amendment right to a jury trial.<sup>1</sup> (*See* dkt. # 1-3 at 2.)

<sup>1</sup> Petitioner filed a copy of his Felony Judgment and Sentence, which indicates that Petitioner was given a determinate sentence. (Dkt. # 1-7 at 4.)

1 The Ninth Circuit has held that “28 U.S.C. § 2254 is the exclusive vehicle for a habeas  
2 petition by a state prisoner in custody pursuant to a state court judgment[.]” *White v. Lambert*,  
3 370 F.3d 1002, 1009-10 (9th Cir. 2004), *overruled on other grounds by Hayward v. Marshall*,  
4 603 F.3d 546 (9th Cir. 2010) (en banc). Petitioner’s petition for writ of habeas corpus is therefore  
5 properly construed as one brought under § 2254.

6 In order to obtain relief under § 2254, a petitioner must demonstrate that his claims for  
7 federal habeas relief have been properly exhausted in the state courts. 28 U.S.C. § 2254(b)-(c).  
8 The exhaustion requirement is a matter of comity, intended to afford the state courts “an initial  
9 opportunity to pass upon and correct alleged violations of its prisoners’ federal rights.” *Picard v.*  
10 *Connor*, 404 U.S. 270, 275 (1971) (internal quotation marks and citations omitted). In order to  
11 provide the state courts with the requisite “opportunity” to consider his federal claims, a prisoner  
12 must “fairly present” his claims to each appropriate state court for review, including a state  
13 supreme court with powers of discretionary review. *Baldwin v. Reese*, 541 U.S. 27, 29 (2004)  
14 (citing *Duncan v. Henry*, 513 U.S. 364, 365 (1995), and *O’Sullivan v. Boerckel*, 526 U.S. 838,  
15 845 (1999)). Petitioner makes clear that he has not presented the issue raised in his federal  
16 habeas petition to any state appellate court for review. (*See* dkt. # 1-1 at 2-5.) Petitioner’s claim  
17 is therefore unexhausted and not currently eligible for federal habeas review.

18 Based on the foregoing, the Court hereby ORDERS as follows:

19 (1) Petitioner shall SHOW CAUSE, not later than ***thirty (30) days*** from the date on  
20 which this Order is signed, why his petition and this action should not be dismissed for failure to  
21 exhaust state court remedies. Failure to timely respond to this Order will result in a  
22 recommendation that this action be dismissed.  
23

1 (2) The motions submitted by Petitioner in conjunction with his federal habeas  
2 petition (dkt. ## 1-2, 1-3, 1-4, 1-5, 1-6) are STRICKEN pending any response from Petitioner to  
3 this Order.

4 (3) The Clerk is directed to NOTE this matter on the Court's motion calendar for  
5 **November 8, 2024**, for review of Petitioner's response to this Order to Show Cause.

6 (4) The Clerk is directed to send copies of this Order to Petitioner and to the  
7 Honorable John H. Chun.

8 Dated this 8th day of October, 2024.

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10 MICHELLE L. PETERSON  
11 United States Magistrate Judge  
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